1949. **File No.** O. Factories/49

Legal DEPARTMENT

A BRANCH

Subject:—

Opinions under the Factories Act, 1948

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543-A

C O N T E N T S.

Legal Department File No. O. Factories /49.

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JPS. 11/5/56.
& 5 copies.

15/5

Office of the R.L.A.

Question whether Government Central Press is a factory- Factories Act, 1948 section 2(K).

Doubt is felt whether the Government Central Press would fall within the scope of the Factories Act, 1948. The Commissioner of Labour (Factory Department) states that the Government Central Press was amenable to the provisions of the Factories Act, 1934, as it was a factory within the meaning of Section 2(j) of that Act, but that the position has since changed and it is doubtful whether the Press, which is not working by way of trade or for the purposes of gain, would come within the definition of 'manufacturing process' as given under section 2(K) of the Act of 1948. The R.L.A. is requested to advise.

In the Factories Act 1934 a 'factory' was defined to mean 'any premises including the precincts thereof wherein 20 or more workers are working and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on. 'Manufacturing Process was defined in clause (g) of section 2 as follows:-

'Manufacturing process' means any process-

(i) for making, altering, repairing, ornamenting, finishing or packing or otherwise treating any article or substance with a view to its use, sale, transport, delivery or disposal; or

(ii) for pumping oil, water, or sewage; or

(iii) for generating, transforming or transmitting power.

In the Act of 1948, the definition of the term 'Factory' was widened. The alteration material for our present purpose was made in the definition

of....

of the term 'manufacturing process'. Sub-clause (1) of the original clause (g) was expanded. Sub-clauses (2) and (3) were retained and two fresh sub-clauses (4) and (5) were added as follows:-

"(4) Printing by letter-press, lithography, photogravure, or other similar work or book-binding, which is carried on by way of trade or for the purposes of gain or incidentally to another business so carried on; or

(5) Constructing, reconstructing, repairing, re-fitting, finishing or breaking up ships or vessels".

The requirements of a factory under the combined effect of clauses (j) and (m) of the Factories Act, 1948 are :-

(1) premises including their precincts,

(2) the requisite number of workers, and

(3) carrying on of a manufacturing process in any part of the premises or precincts.

The first two are, of course, fulfilled in the case of the Government Central Press. The only question is whether the third is also fulfilled.

The assumption that the Government Central Press is not run by way of trade or for the purposes of gain should in the first place be verified. The essence of carrying on any work by way of trade for the purposes of gain is that profit or direct gain must accrue. Even if it be established thatthe Government Central Press is not run by way of trade or for the purposes of gain in this sense that would at the most mean that it would not fall within the definition of manufacturing process' as given in sub-clause (4) of clause (K)

of..

of the Act 1948. The Commissioner of Labour, however, admits that the Press fell within the scope of the first clause even before. All these sub-clauses are connected by the disjunctive word 'or'. The word 'or' has prima facie only an alternative significance and in the absence of some restraining context be read as dijunctive and not as idest. So long, therefore, as the 'manufacturing process' carried on in any part or premises of the Press, falls within any one of the sub-clauses, then Press would become a factory. The contention that the process namely of printing as such by letter press etc;, carried on in the Press does not fall within one sub-clause out of the five would not take it out of the purview of the definition of 'manufacturing process! Looking to the object of the Act it is obvious that these two last sub-clauses (4) and(5) were added by way of caution to remove the doubt that the work specified therin may not come within the scope of Clause (1) which is in general terms. Thus Clause (4) was intended to get rid of the contention that where printing alone is done it may not amount to making or otherwise treating or adapting an article or substance with a view to its use, sale, transport, delivery or disposal; although it must be confessed that the word "use" should ordinarily be given the widest possible significance, namely, employing it to any purpose. However that may be, the fact that printing etc., in the press is not done by way of trade for the purposes of gain would not exclude it from the definition if the other part of the definition namely that given in clause (1) is applicable.

The....

The Commissioner of Labour is of opinion that the first part is applicable, and, as the R.L.A understands the position, the process of makir books or pamphlets for the purpose of sale is carried on in the Press or part thereof. If tha be so, the Press still would remain a factory as it admittedly was under the repealed Act of

Sd/- P. M. L.
2/8
Remembrancer of Legal Affairs.

U.R. to H. & L.G.D. (through Labour Dept.)
No.3675, dated the 2nd August 1949.

JPE. 11/5/56.
4 copies.

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The Factories Act, 1948.

Sections 106 & 120.

Under the old Factories Act, 1934, a prosecution could be instituted only within six months from the date of the offence. Under section 106 of the new Factories Act, 1948, the period of six months has now been changed to three months but it is made to start from the date on which the offence came to the knowledge of the Inspector and not from the date when the offence was committed. The limitation period fxor the offence of disobeying the order of an Inspector has been changed from 12 months to six and it is made to start from the date on which the offence is alleged to have been committed. The question for the H.L.A.'s consideration is whether section 106 is retrospective.

In the case of the Ydun (1899 Probate Division, page 236) it was held that where an enactment deals with procedure only, unless the contrary is expressed, the enactment applies to all actions whether commenced before or after the passing of the Act and a statute shortening the time within which proceedings can be taken is retrospective. This case was followed in Rex v. Chandra Dharma (1905 2 K.B. 335) where it was held by Lord Alverstone C.J. that it was impossible to give any good reason why a statute extending the time within which the proceedings may be taken should not also be held to be retrospective. It is therefore clear that section 106 of the new Factories Act,1948, is retrospective but, in view of section 120 which provides that anything done under the repealed enactment, which could have been done under this Act if it had been then in force, should be deemed to have been done under this Act, the pending proceedings are saved and the limitation prescribed by section 106 would not apply to such proceedings. In respect of the Proceedings to be filed after the

new Factories Act came into force, section 106 will apply even to offences which werex committed before the new Act came into force.

Id/- P. M. L.
25/7/

Remembrancer of Legal Affairs.

U.R. to Labour Department, No. 8425,
dated the 26th July 1949.

JPE. 11/6/36.
4 copies.

R.I.No. 8293
3-6-49

Submitted.

The Commissioner of Labour, Bombay states that according to section 79(1) of the Factories Act, 1948, a worker who has completed a period of twelve months continuous service is entitled to leave at the rate as provided in clause (i) or (ii) of the section . The Act is stated to have come into force from 1-4-49 and since the rates of leave are higher than the rate prescribed in section 49B (1) of the Factories Act, 1934, he considers that workers who complete 12 months service on that date are entitled to leave at the enhanced rate. The questions raised for the considerations of the R.L.A. are:-

(1) Whether a worker who has completed 12 months service before 1-4-1949 but has not still been allowed the same can now claim leave at the enhanced rate according to new Act; and

(2) Whether a worker who enjoyed the leave at the old rate earlier can legally ask for the remaining leave on the basis of the new Act.

JPE. 11/5/56.
4 copies.

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Seen and returned.

2. The point raised is covered by the R.L.A.'s opinion No. 7424, dated the 18th July 1947.

Sd/- F. M. L.
2/8
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U.R. to Lab.Deptt., No. 8715, dated the 3rd August 1949.

JPZ. 11/8/56
4 copies.

Office of the R.L.A.

Proving previous conviction of accused.

It would not be proper to mention the fact of the previous conviction in the complaint. The usual procedure of proving a previous conviction may be adopted. After the Court has convicted the accused, the prosecutor in charge of the case should notify to the Court that the accused was convicted within a period of 2 years. The Court should thereupon question the accused on the point and if he admits, no question of leading proof arises. If on the other hand the accused denies his previous conviction, the prosecutor should produce a certified copy of the judgment in question.

Id/- P. M. L.
20/8
Remembrancer of Legal Affairs.

U.R. to Labour Department, No. 9445.
dated the 22nd August 1949.

JPR. 11/8/66.
4 copies.

No. 13151
Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 18th November 1949.

From
P.M.Lad, Esquire, I.C.S.,
Remembrancer of Legal Affairs.

To
S.R.Sohoni, Esquire,
Technical Adviser,
Industrial Research Section,
BARODA.

Subject :- Holidays with pay according to the Factories (Amendment) Act for the Industrial Research Section.

Sir,

With reference to your letter dated the 10th August 1949 on the subject noted above, I have the honour to enclose herewith my opinion on the question raised therein.

Yours faithfully,

Id/- P. M. L.
18/11
Remembrancer of Legal Affairs.

JPE. 11/5/56.
4 copies.

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In his letter dated 23-7-1949 the Technical Adviser states that " the Industrial Research Section is run as a branch of the Department of Commerce and Industries since September 1947 and upto now we have manufactured a Prototype Glider Baroda-IV which is submitted to the Directorate General of Civil Aviation in India for Air worthiness certificate. Although the work done upto now this time was not on a production basis, it is an established idea that the Gliders manufactured here, after procurement of the Airworthiness type certificate, are to be sold to the Government of India, Defence Department and other Gliding clubs."

In Circular No. L/2025, dated 21st April 1949, the Director of Commerce, Industries and Labour, Baroda State invited attention to the Provisions of the Baroda Factories (Amendment) Act 1948 and informed all non-Seasonal factories thus:-

"In accordance with the award of the ....it is suggested that in lieu of leave earned from 1-8-1946 to 31-12-1947 payment at the rate of the average earning including dearness allowance be made to the workers and for leave for the period from 1-1-1948 onwards, workers should be allowed holidays with pay (including d.a.) as required by law."

From the proceedings of the meeting held on 18-7-49 by the Supervisory Committee for Industrial Research Section (vide resolution 37) it appears that as all the workers of Industrial Research Section were relieved on 30-6-1949, it was resolved that in pursuance of the circular letter No. L/2025, dated 21st April 1949 all the workers be paid in lieu of the leave earned by them according to the presence for the period ending June 1949.

The question for R.L.A's consideration is whether the Circular letter No. L/2025, dated 21 st April 1949 issued by the Director of Commerce, Industries and Labour, Baroda State, is applicable to the Industrial Research Section.

JPZ. 11/5/56.
4 copies.

The Baroda Factories Act, 1940, applies to factories belonging to the State.(Vide section 77). The "factory" means any premises including precincts thereof whereon twenty or more workers are working, or were working on any day of the preceding 12 months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, but does not include a mine (see clause of of section 2).

"Seasonal Factory" is defined in section 4(1)(). The expression "manufacturing process" as defined in clause ( ) of section 2 means any process--

(i) for making, altering, repairing, ornamenting, finishing, or packing or otherwise treating any article or substance with a view to its use, sale, transport, delivery or disposal.

It is stated that although the work of manufacturing Prototype Glider Baroda-IV was not on a production basis, it was with an established idea that the Gliders so manufactured, were, after procurement of air worthiness certificate, to be sold to the Government of India, Defence Department and to other Gliding clubs. As the object of manufacturing the Gliders was to sell them, after obtaining the airworthiness certificate, the premises wherein they were manufacturing would be a 'factory' wherein manufacturi process was carried on. As the factory was not "Seasonal factory" within the meaning of section 4(1) ( ), the Act would be applicable to such factories.

Chapter IV-A was added to the Factories Act, 1940 by the Baroda Factories (Amendment) Act, 1948 which was brought into force retrospectively from 1st August 1946. Under section 48 B(1) every worker who completed a period of twelve months service in a factory shall be allowed, during the subsequent period of twelve months, holidays for a period of ten days. Under section 48 B (2), if any worker failed to enjoy such leave of ten days, the holidays

not taken by him shall be allowed to him in the succeeding period of twelve months etc. Under section 48 B (3), if a worker entitled to holidays under subsection (1) is discharged by his employers before he has been allowed to enjoy the holidays, the employer shall pay him the amount payable under section 2 48 C. As the Baroda Factories (Amendment) Act, 1948, came into force from 1st August 1946 and as the Industrial Research Section was run from September 1947 every worker who was in contunuous service from septembar 1947 would be entitled, as of right, to 10 days holidays during the succeeding period of twelve months. (See R.L.A's No. 7424, dated 18th July 1947). Though the Baroda Factories Act is now repealed by Indian Factories Act, 1948, the right accrued to the workers in regard to holidays pay would be saved by para. 5(iii)(a) of the Baroda State (Application of Laws) Order. 1949.

JPS. 14/5/56
4 copies.